

PRETRIAL CONFERENCES, SCHEDULING AND MANAGEMENT

In order to accommodate the requirements of Fed. R. Civ. P. 16 (scheduling conferences and orders) and to facilitate compliance with Fed. R. Civ. P. 26(a)(1) (required initial disclosures) and 26(f) (conference of the parties and report to the Court) in cases not exempted below, this District adopts the procedures set out in Rules 16.01-16.02 below.

16.00: *Exemptions and Stay of Deadlines.*

- (A) *Exempt Actions.* Scheduling orders will generally not be entered in any action listed in Fed. R. Civ. P. 26(a)(1)(E) (categories of actions exempted from the federal rule initial disclosure and conference requirements). To the extent discovery is appropriate in any action covered by Fed. R. Civ. P. 26(a)(1)(E), it shall be governed by Local Civil Rule 26.04 absent entry of a specific scheduling order.
- (B) *Non Exempt Pro Se Actions.* In any action in which a party is proceeding without counsel (“*pro se*”), but which is not covered by Fed. R. Civ. P. 26(a)(1)(E)(iii) (prisoner *pro se* actions), the Court’s initial order shall address whether the Fed. R. Civ. P. 26(f) conference or any other federal or local rule requirements addressed in Local Civil Rules 16.01-16.02 are waived.⁵ Except to the extent the requirements are waived, orders in *pro se* actions shall address all deadlines listed in Local Civil Rules 16.01-16.02.
- (C) *Stay of Deadlines and Entry of Scheduling Orders.* The Court may stay entry of the scheduling order(s) and all Federal and Local Civil Rule disclosure and conference requirements pending resolution of a motion to remand or to dismiss or other dispositive motion. Any party desiring a stay on this basis shall file a separate motion to stay which shall attach a proposed order. No consultation or separate memorandum is required.

⁵ Due to the special concerns raised by oral communications between counsel and unrepresented (“*pro se*”) litigants, it is the general practice in this District to waive the Fed. R. Civ. P. 26(f) conference requirement when any party is proceeding *pro se*. *See also*, Local Civil Rule 7.02 (no consultation requirement in *pro se* actions). Because these concerns are not present as to written communications or submissions, it is the general practice in this District not to waive the disclosure requirements of Fed. R. Civ. P. 26(a)(1)-(3), the report requirement of Fed. R. Civ. P. 26(f), and the various requirements of Local Civil Rule 26 in a *pro se* action to which they otherwise apply. *See* Fed. R. Civ. P. 26(a)(1)(E) (exempting prisoner *pro se* actions from the 26(a)(1) requirements absent order to the contrary); Local Civil Rule 26.03(D) (addressing submission of Fed. R. Civ. P. 26(f) report when the conference requirement is waived).

16.01: *Pre-Scheduling Order*.

- (A) Upon the appearance of a defendant, and to the extent the requirements of Fed. R. Civ. P. 26(a)(1) and (f) are not otherwise waived by the Court or Fed. R. Civ. P. 26(a)(1)(E), the Court shall either issue a tentative scheduling order which shall require a Fed. R. Civ. P. 26(f) conference and report and shall become binding absent objection after such report or, by order, set deadlines for the following:
 - (1) Fed. R. Civ. P. 26(f) conference of the parties (to be held no later than forty-five (45) days after the appearance of a defendant);
 - (2) Fed. R. Civ. P. 26(a)(1) required initial disclosures (to be made no later than fourteen (14) days after the Fed. R. Civ. P. 26(f) conference);⁶ and
 - (3) Fed. R. Civ. P. 26(f) report to the Court (to be filed no later than fourteen (14) days after the Fed. R. Civ. P. 26(f) conference).
- (B) The order shall include:
 - (1) Notice to counsel that Local Civil Rule 26.03 lists additional queries to be answered in the Fed. R. Civ. P. 26(f) report and that the Court's general practices as to Scheduling Orders and Conferences are addressed by Local Civil Rule 16.02;
 - (2) Any special instructions for submission of the Fed. R. Civ. P. 26(f) report requested by the assigned judge;
 - (3) Information regarding the availability of alternative dispute resolution;
 - (4) A directive that plaintiff's counsel shall initiate scheduling of the Fed. R. Civ. P. 26(f) conference with all counsel known to plaintiff regardless of whether they have filed appearances; and
 - (5) The notice of right to consent to trial before a magistrate as discussed in Local Civil Rules 73.02(B)(1) and 73.03.
- (C) If additional parties make appearances following the issuance of the Local Civil Rule 16.01 Pre-Scheduling Order, the Clerk of Court shall immediately

⁶ Pursuant to Fed. R. Civ. P. 26(a)(1), the parties may, by stipulation, agree not to make some or all of the Rule 26(a)(1) initial disclosures. If such a stipulation is made, it shall be confirmed in writing between the parties. *See* Local Civil Rule 29.01.

forward the Pre-Scheduling Order and all attachments to those parties or their legal representatives (if represented).

- (D) Any extraordinary circumstances justifying modification of these deadlines shall be brought to the attention of the assigned judge as soon as practicable.

16.02: *Scheduling Conference and Scheduling Order.*

- (A) *Conference with the Assigned Judge.* It is the normal practice in this District to issue the scheduling order based on the information received from the Fed. R. Civ. P. 26(f) report to the Court, including the disclosures required by Local Civil Rule 26.03, without further conference. If one or more parties believes a conference is justified by the particular circumstances of the case, they shall so inform the assigned judge by letter as soon as practicable.
- (B) *Trial Date.* Unless otherwise directed by the Court, all cases shall be ready for trial on the date set for jury selection. Therefore, for scheduling purposes under the Federal Rules of Civil Procedure and the Local Civil Rules of this District, the jury selection date shall be deemed the trial date.
- (C) *Content of Scheduling Order.* “[A]s soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant” (Fed. R. Civ. P. 16(b)), the Court shall issue a scheduling order setting deadlines for the following:
 - (1) Filing of motions to join parties and to amend the pleadings (Fed. R. Civ. P. 16(b)(1));
 - (2) Exchange of Fed. R. Civ. P. 26(a)(2) expert witness disclosures and filing of any related disclosure and certification required by the scheduling order;⁷
 - (3) Service of affidavits of records custodian witnesses proposed to be presented by affidavit at trial (*See* Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3));
 - (4) Completion of discovery (Fed. R. Civ. P. 16(b)(3)) and filing of certification of consultation with client and opposing counsel as to the use of alternative dispute resolution as required by Local Civil Rule 16.03;

⁷ The majority of the judges in this District require filing of a document identifying the expert witnesses and certifying that the required disclosures have been made. This is intended to preclude disputes at trial as to whether disclosures were made. The disclosures themselves should not be filed absent order to the contrary.

- (5) Conclusion of alternative dispute resolution conference, if any;
- (6) Filing of dispositive motions (Fed. R. Civ. P. 16(b)(2));
- (7) Filing and exchanging of Fed. R. Civ. P. 26(a)(3) pretrial disclosures;
- (8) Filing and exchanging of Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party, and any deposition counter-designations under Fed. R. Civ. P. 32(a)(4). *See* Local Civil Rule 30.03(J) (video deposition additional requirements);
- (9) Meeting, marking, and exchanging of exhibits and completion of a final exhibit list with objections noted. *See* Local Civil Rule 26.07 (instructions relating to exhibits);
- (10) Submission of Local Civil Rule 26.05 pretrial brief to the Court;
- (11) Jury selection.⁸

All disclosures shall be supplemented in a timely manner. In the event an action is carried over to a later trial term after pretrial disclosures are made and pretrial briefs are filed, the parties should file and serve any supplementation in a like period of time prior to the new trial term, but need not file and serve disclosures or briefs that are merely duplicative.

(D) *Timeliness of Requests and Disclosures.*

- (1) Discovery requests are timely if served in time for the response to be served within the discovery deadline set by the scheduling order.
- (2) Witnesses who are not timely identified may be excluded. All witnesses should be identified as early in the discovery process as is feasible. Witnesses identified within the last thirty (30) days of the discovery period will be presumed not to be timely identified, absent a showing of good cause.
- (3) Affidavits of records custodians which a party intends to offer for authentication in lieu of live testimony shall be served no less than thirty (30) days before the close of discovery unless otherwise ordered. Objections to such affidavits must be made within fourteen (14) days after the service of the disclosure unless otherwise ordered. *See* Local Civil Rule 16.02(C)(3).

⁸ The trial term commences on the date of jury selection whether the action is to be tried with or without a jury. Trial terms may last from one to two months. Absent a contrary instruction from the Court, an action should be ready for trial on the date set for jury selection.

16.03: *Alternative Dispute Resolution (“ADR”) Statement and Certification.* Within the time set forth in the Scheduling Order (Local Civil Rule 16.02(C)(4)), counsel for each party shall file and serve a statement certifying that counsel has: (1) provided the party with any materials relating to ADR which were required to be provided by the Local Civil Rule 16.01 Pre-Scheduling Order; (2) discussed the availability of ADR mechanisms with the party; and (3) discussed the advisability and timing of ADR with opposing counsel.

16.04: *Mediation: Definitions.*

- (A) *Mediation.* An informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial by judge or jury.
- (B) *Mediator.* A neutral person who acts to encourage and facilitate the resolution of a pending civil action. The mediator has no authority to make a decision or impose a settlement. Mediators are normally compensated by the parties. *See* Local Civil Rule 16.11.

16.05: *Actions Subject to Mediation.* All civil actions filed in the District are subject to mediation under these Local Civil Rules. Parties may, however, decline to participate in mediation by so notifying the Court.

16.06: *Appointment of Mediator.*

- (A) *Eligibility.* A mediator may be a person who:
 - (1) Is a certified mediator under Local Civil Rule 16.12; or
 - (2) Is not a certified mediator but in the opinion of all of the parties is otherwise qualified by training or experience to mediate all or some of the issues in the action.
- (B) *Roster of Certified Mediators.* The Clerk of Court shall maintain a roster of mediators certified under Local Civil Rule 16.12 who are willing to serve in the District. A certified mediator shall notify the Court if the mediator desires to be added or deleted. The roster shall be available to the public.
- (C) *Selection of a Mediator by Agreement of the Parties.* Unless otherwise ordered, the parties must select a mediator within twenty (20) days after the date on which the Court issues its order referring the case to mediation.
- (D) *Appointment of Mediator by the Court.* If the parties cannot agree upon the selection of a mediator within twenty (20) days after the Court issues its order referring the case to mediation, the plaintiff’s attorney shall advise the Court of this fact and request appointment of a mediator.

- (E) *Disqualification of Mediator.* Any party may move the Court for an order disqualifying the mediator. If the motion is granted and the mediator is disqualified, an order shall be entered appointing a replacement mediator.

16.07: *The Mediation Conference.*

- (A) *When the Conference is to be held.* Unless otherwise ordered, the initial mediation conference shall be held within thirty (30) days of the agreement upon or order appointing a mediator. Unless otherwise ordered, mediation shall be completed within thirty (30) days after the initial mediation conference.
- (B) *Discovery, Motions, and Trial.* The case will not be called for trial during the period allotted for completion of mediation as set by these Local Civil Rules or Court order. Extensions of time allotted for mediation shall be obtained from the Court only on a showing of good cause. Except by order of the Court, the mediation conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter which would delay the trial of the case following the period allotted for mediation.
- (C) *Privacy.* Mediation conferences are private and reserved for the parties and their representatives. Other persons may attend only with the permission of all the parties and the mediator.

16.08: *Duties of the Parties, Representatives, and Attorneys at Mediation.*

- (A) *Attendance.* The following persons shall attend a mediation conference in person unless otherwise ordered by the Court or agreed upon by the parties and mediator:
 - (1) The mediator;
 - (2) All individual parties; or an officer, director, or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend settlement to the appropriate decision-making body of the agency;
 - (3) The party's counsel of record, if any; and
 - (4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

- (B) *Identification of Matters in Dispute.* The mediator may require, prior to the scheduled mediation conference, that the parties provide brief memoranda setting forth their positions with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the mediator. With the consent of all parties, such memoranda may be mutually exchanged by the parties.
- (C) *Confidentiality.* Communications during the mediation conferences shall be confidential. The parties, their attorneys, and other persons present shall maintain the confidentiality of the mediation and shall not rely on, introduce, or attempt to introduce as evidence in any arbitral, judicial, or other proceeding, any event, document, or communication relating in any way to the mediation.
- (D) *Finalizing Agreement.* If agreement is reached, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the agreement executed by the parties and their attorneys in mediation envisions the execution of a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the formal agreement and such papers to be filed with the Court as may be necessary. Such documents shall be executed by the parties within ten (10) days of the date of the mediation conference. A copy shall be forwarded to the mediator.

16.09: *Sanctions for Failure to Attend Mediation Conference.* If a person fails to attend a duly ordered mediation conference without good cause, the Court may impose upon the party or the party's principal any lawful sanctions, including, but not limited to, the payment of attorney's fees, mediator's fees, and expenses incurred by persons attending the conference, and any other sanction authorized by Rule 37(b) of the Federal Rules of Civil Procedure.

16.10: *Authority and Duties of Mediators.*

- (A) *Authority of Mediators.* The mediator shall at all times be authorized to control the conference and the procedures to be followed.
- (B) *Duties.* The mediator shall set up the mediation conference. The mediator shall define and describe the following to the parties at the beginning of the conference:
 - (1) The process of mediation;
 - (2) The difference between mediation and other forms of conflict resolution;

- (3) The fact that the mediation conference is not a trial; the mediator is not a judge, jury, or arbitrator; and the parties retain the right to trial if they do not reach a settlement;
 - (4) The inadmissibility of conduct and statements as evidence in any arbitral, judicial, or other proceeding;
 - (5) The circumstances under which the mediator may meet alone with either of the parties or with any other person;
 - (6) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (7) The duties and responsibilities of the mediator and the parties;
 - (8) The fact that any agreement will be reached by mutual consent of the parties; and
 - (9) The costs of the mediation conference.
- (C) *Private Consultation/Confidentiality.* The mediator may meet and consult separately with any party or parties or their counsel during the conference. Confidential information disclosed to a mediator by parties or by witnesses in the course of mediation shall not be divulged by the mediator.
- (D) *No Waiver of Privilege.* No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client, work product, or other privilege.
- (E) *Mediator not to be called as Witness.* Except when ordered by the Court for exceptional circumstances shown, the mediator shall not be listed or called as a witness or be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.
- (F) *Duty of Impartiality.* The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.
- (G) *Declaring Impasse.* It is the duty of the mediator to determine when an impasse exists in the mediation or when the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

- (H) *Reporting Results of Conference.* The mediator shall report to the Court in writing within ten (10) days of conclusion of the mediation whether an agreement was reached by the parties without disclosure of the substance, tenor, or other confidential matter. If an agreement was reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissal.
- (I) *Statistical Data.* The Clerk of Court may require additional statistical data from the mediator or parties.
- (J) *Immunity.* The mediator shall not be liable to any person for any act or omission in connection with any mediation conducted under these Local Civil Rules.

16.11: *Compensation of the Mediator.*

- (A) *By Agreement.* When the mediator is stipulated to by the parties, compensation shall be agreed upon between the parties and the mediator.
- (B) *By Court Order.* When the mediator is appointed by the Court, the mediator shall be compensated by the parties at an hourly rate set by agreement of the parties or by the appointing Court.
- (C) *Payment of Compensation by the Parties.* Unless otherwise agreed to by the parties or ordered by the Court, fees for the mediation conference shall be paid in equal shares per party. Payment shall be due upon conclusion of the conference unless other arrangements are made with the mediator, or unless a party advises the mediator of his or her intention to file a motion to be exempted from payment of mediation fees pursuant to Local Civil Rule 16.11(D).
- (D) *Indigent Cases.* A party may move before the Court to be exempted from payment of mediation fees based upon indigency. Applications for indigency shall be made and considered by the Court before the mediation conference has been scheduled. *See* Local Civil Rule 16.12(F).

16.12: *Mediator Certification and Decertification.* The Clerk of Court or designee may receive applications for certifications of persons to be appointed as mediators. Approval shall require the consent of at least one district judge. The application shall be on a form approved by the Clerk of Court. For certification, a person must:

- (A) Be admitted to practice law in this state, in the highest court of another state, or of the District of Columbia and meet the following qualifications:
 - (1) Have practiced law for at least five (5) years;

- (2) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association or the South Carolina Supreme Court under Rule 402(c)(3), South Carolina Appellate Court Rules, as now in force or as hereafter modified;
 - (3) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;
 - (4) Not currently be disbarred or suspended from the practice of law and not be the subject of any pending disciplinary proceedings in any jurisdiction;
 - (5) Not have been, within the last five (5) years, denied admission to a bar for character or ethical reasons or disciplined for professional misconduct; and
 - (6) If not a member of the South Carolina Bar, agree to be subject to the Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules, as now in force or as hereafter modified; to the Rule on Disciplinary Procedure, Rule 413, South Carolina Appellate Court Rules, as now in force or as hereafter modified, and/or Local Civil Rule 83, to the same extent as an active member of the South Carolina Bar practicing before this Court.
- (B) Have completed a civil mediation training program approved by the South Carolina Supreme Court or its designee, or this District Court, or any other equivalent training program or experience;
 - (C) Demonstrate familiarity with the statutes, rules, and practice governing mediation conferences in the District of South Carolina;
 - (D) Be of good moral character and adhere to any ethical standards applicable to attorneys or mediators practicing before this Court, or in the courts of the State of South Carolina;⁹
 - (E) Pay any administrative fees established for mediators by the District of South Carolina; and
 - (F) Agree to provide mediation to indigents without pay (or with pro rata reduction in fees to be paid if fewer than all parties are indigent).

⁹ This Court hereby adopts and incorporates standards established for mediators practicing in the courts of South Carolina as may be currently in existence or hereafter adopted or modified. Mediators who violate these Local Civil Rules or applicable ethical standards are subject to discipline under the procedures set out in Local Civil Rule 83 for discipline of attorneys.

It is the duty of every person approved as a mediator to notify the Clerk of Court of any change in his or her ability to satisfy all requirements for mediators set forth above.

Certification may be revoked or not renewed at any time it is shown to the satisfaction of the chief judge or his or her designee that a mediator no longer meets the above qualifications or has not faithfully observed these Local Civil Rules.

16.13: *Expedited Trial*. The following procedure is established to encourage the expeditious trial of matters likely to require a minimum of preparation time and judicial involvement before trial. Expedited trial will generally mean trial between three and eight months after joinder of the issues.

16.14: *Expedited Trial: Request and Conference*.

- (A) Counsel may, at any time, request the Court to set the case for an expedited trial.
- (B) The request should specify the anticipated scope of discovery and time required for completion, the number and type of any anticipated pretrial motions, and the anticipated date by which the matter can be ready for trial. Unless the request is included with the Fed. R. Civ. P. 26(f) report (as supplemented by Local Civil Rule 26), counsel shall confer with opposing counsel regarding the above matters, and the nature of any differences shall be set forth in the request for expedited trial.
- (C) Upon receipt of the request, the Court will consider the same and may schedule a conference¹⁰ on the request. The Court may, however, act on the request on the basis of correspondence and/or documents in the file.
- (D) Opposing counsel may submit additional information in favor of or opposing expedited trial at or before the conference, including additional information by way of answers to the Fed. R. Civ. P. 26(f) report to the Court. *See* Local Civil Rule 26.03.

16.15: *Expedited Trial Conference*. The following matters should be considered at the conference.

- (A) Whether the case is appropriate for expedited trial;
- (B) Limitations on discovery;
- (C) Limitations on motions (including limitation of supporting memoranda);
- (D) Limitations on witnesses;
- (E) Appropriateness of mediation;

¹⁰ The conference may be conducted in person or by telephone.

- (F) The trial date;
- (G) Modifications to the pretrial brief requirements;
- (H) Any other appropriate matters.